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Colonel Munford was also the author of many literary works of high merit. At Richmond, in 1867, he delivered a lecture on the "Jewels of Virginia" which for beauty of style and purity of diction is the equal of any composition, while the information and history it contains are truly valuable.

And who is it who has not laughed and wept by turns at the exquisite humor and the tender pathos of the lives of dear old Parsons Blair and Buchanan, so beautifully told in the "Two Parsons."

I would that I had space in a paper of this character to tell more of his traits of mind and character, of his loyalty to his friends, his patriotism, his devotion to the Confederacy, of his tears for Virginia in her hour of shame, in the dark days of reconstruction, of his contempt and bitter denunciation of the harpies who then preyed upon her vitals, but space forbids. In private life, he was pure and lovable—in public life, able. incorruptible and of unswerving fidelity.

He was a man who in every walk of life measured up to the highest standard of manhood.

Full of years, full of labors, full of honors, he sleeps to-day in the land he loved so well. God rest him.

"There is no prouder grave even in our own proud clime."

PARTNERSHIP INSTRUMENTS UNDER SEAL.

THE decision of the Court of Appeals of Virginia in the late case of *Gordon* v. *Funkhouser*,[1] announces a doctrine of the law of partnership which the writer deferentially submits is not in line with the modern trend of commercial law, or the later American authorities. This was an action upon a sealed instrument executed in the firm name by one partner. The court held that the partner who had not executed the bond was not bound thereby, in the absence of proof that he had given his partner *prior authority under seal* to execute sealed instruments. The question of subsequent ratification by the defendant did not arise in the case. The lower court had refused to give the following instruction:

"The jury is further instructed that before the plaintiff can recover in this action against Dr. W. A. Gordon they must believe from the evidence that Dr.

[1] 42 S. E. 677.

W. A. Gordon was not only a partner of the firm of Sites & Gordon on the 2d day of December, 1895, when the bond sued on was executed, but also that the same was executed by Sites under authority *under seal* from Dr. W. A. Gordon, and the burden of proving that fact is upon the plaintiff."

The appellate court reversed this ruling of the lower court, and held that the instruction should have been given, thus following the old maxim applicable to agents: "The stream cannot rise higher than its source," and ignoring the well established exception in the case of partnerships.

There are three well settled principles of law governing partnership bonds, which may be stated thus: 1—One partner has no implied authority to bind the others by bond. 2—If the instrument be valid and effective without a seal, and within the power of a partner, the attempt to seal it in the name of the firm will not vitiate its legal effect as an unsealed instrument. 3—A partner may bind his copartners by a contract under seal, made in the name and for the use of the firm in the course of the partnership business, provided the copartners assent to the contract previously to its execution, or afterwards ratify and adopt it. This last rule is an exception to the doctrine of agency that a stream cannot rise higher than its source, but I will attempt to demonstrate that it is a well settled exception.

Prof. Mechem, in his Elements of Partnership,[2] says:

"To sustain such instruments (i. e. sealed instruments) against the firm, when executed by a single partner, the previous authorization or subsequent ratification by the firm must be shown. Contrary to the rule usually applicable in such cases, this authorization or ratification may be effected by parol."

He cites *Tischler* v. *Kurtz*.[3] This same principle is laid down in 22 Am. and Eng. Ency. of Law,[4] where a great many authorities are cited.

In *Edwards* v. *Dillon*,[5] the facts were as follows: A firm dealing in fine horses sold a stallion to the plaintiff, one member of the firm executing a sealed warranty in the firm name. The plaintiff sued in *assumpsit* on the warranty, and the partner who had not signed set up the defence that he was not bound by the warranty because his copartner had no authority under seal to bind him by sealed instruments. The court held, however, that:

"Under the American doctrine the liability of the partners will not be confined to the one who signs the sealed instrument in the name of the firm, if it appear

[2] Sec. 180.
[3] (1895) 35 Fla. 323, 17 South. 661.
[4] (2 Ed.) 159.
[5] 147 Ill. 14, 37 Am. St. Rep. 199.

that the prior assent or subsequent ratification of the other partners can be implied from their acts and declarations, or from other proper evidence tending to show such assent or ratification."

In *Drumright v. Philpot,*[6] the same rule is laid down. In that case an action of covenant was brought on a deed of warranty to which the firm name had been signed by one of the partners. The plaintiff had bought negroes from the defendant, who had warranted them free from disease, and the negroes all proved unsound. The court held both parties liable on the sealed warranty, saying:

"An absent partner is not bound by a deed executed for him by his copartner, without his previous authority or permission, or his subsequent adoption. But the previous authority or permission of one partner to another, or the subsequent adoption of the seal as his own, will impart efficacy to the instrument as his deed; and that previous authority or subsequent adoption may be by parol."

Another interesting case on this subject is *Price* v. *Alexander.*[7] Here, the defendants, partners in the storage business, were sued on a bond in the firm name, executed by one member of the firm, in which bond the defendants covenanted to pay over to the plaintiff one half of the clear net profits realized from the storage business. The court held both partners liable on the sealed warranty, saying:

"It now appears to be well settled that a sealed instrument made by one partner in the name of the firm is binding upon his copartners who assent to the contract before its execution, or subsequently adopt it either by parol or other evidence of ratification."

I will quote from but one other case. In *Bond* v. *Aitkin,*[8] a bond for four hundred dollars was given for a debt, the obligee in which was the plaintiff, Charles Bond. The obligors were partners, and the firm name was signed to the instrument by one of the members, and the seal attached. An action of debt was brought on the bond, and the partner who had not signed defended on the ground that he was not bound on a bond unless he had previously given his copartner authority under seal to sign for him. But the court overruled this defence, and said:

"The principle is settled that a partner may bind his copartner by a contract under the seal, in the name and for the use of the firm, in the course of the partnership business, provided the copartner ratifies and adopts it; and this assent or adoption may be by parol. And we are satisfied that the rule is founded on principles of justice and policy and supported by the general tenor of the adjudged cases in this country and in England."

[6] 16 Ga. 424, 60 Am. Dec. 738.
[7] (Ia.) 52 Am. Dec. 526.
[8] (Pa.) 40 Am. Dec. 550.

The same principle is laid down in the cases cited in the footnote.[9]

It is true that the late Prof. John B. Minor[10] maintains that the comon law rule requiring authority under seal in cases like the above still obtains in Virginia, citing several Virginia authorities, and our Court of Appeals apparently rests its decision in the case under discussion upon these same authorities. But none of these Virginia cases is exactly in point, and in none of them is it held that a partner who has not signed a sealed instrument is liable only where he has given his copartner authority under seal. *Preston* v. *Hull*[11] is cited by Prof. Minor, but that was not a case involving the law of partnership. The decision is merely that a *principal* who signs his name to a bond in which the name of the payee is left blank, is not liable on the bond, the blank having been filled in by his *agent* without authority under seal. In *Sale* v. *Dishman,*[12] there is a *dictum* to the effect that only the partner who signs a deed is liable, but the point is immaterial in the case, because the court holds both parties liable on the original obligation, there being no merger in such cases. In *Galt* v. *Calland,*[13] we find another adverse *dictum,* but the court really held that all the partners were liable in equity, not on the bond, but because the instrument was not required to be sealed, thus putting the case under the head of principle No. 2 as stated in the second paragraph of this article. *Weaver* v. *Tapscott*[14] is certainly not in point, as in that case the partner signed his *individual* name to the bond, not the firm name. The same fact appears in *Ward* v. *Motter,*[15] but the case is slightly different from *Weaver* v. *Tapscott,* in that there was a silent partner, not known by the plaintiff to be a member of the firm at the time the bond was executed. The court held the silent partner not liable on the bond, because the other partner signed his individual name to it. This decision is weakened by the fact that one judge dissented and two others were absent.

There is undoubtedly a well defined distinction between the case of one *partner* signing the firm name to a bond and the case of an *agent* signing his principal's name to a bond, and this distinction is based on sound common sense. It would seem, therefore, not

[9] Skinner v. Dayton (N. Y.) 10 Am. Dec. 286; Swan v. Stedman, 4 Met. 548; and in Cady v. Shepherd (Mass.), 22 Am. Dec. 379.

[10] 3 Min. Inst. 711.

[11] 23 Gratt. 600.

[12] 3 Leigh, 548.

[13] 7 Leigh, 594.

[14] 9 Leigh, 424.

[15] 2 Rob. 536.

to be necessary, as Judge Cardwell asserts, to do away with all distinctions between sealed and unsealed instruments to hold a partner liable on a bond signed in the firm name by his copartner without authority under seal. He would be liable if the seal were left off; why should he escape liability because it is put on? To allow partners to escape liability on this technical ground will often result in great hardship to innocent strangers who have accepted such bonds in the belief that the partnership is bound. Especially is this result to be deplored when the bond is given for partnership purposes, all the partners receiving the benefit of the act.

As the legislature has already abolished some of the ancient and technical distinctions between sealed and unsealed instruments, the writer suggests that it would be well for that body to complete its work and change the law as enunciated by the Court of Appeals in the case under discussion.

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